IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 33663 of 2007(G)

PETITIONERS:

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1. **SHYAMLAL, AGED 32 YEARS,**
   S/O. PARAMESWARAN, PUTHUMANASSERY HOUSE,
   P.O.BRAHMAKULAM-680 104, THYKKAD,
   THRISSUR DISTRICT.

2. **PARAMESWARAN, AGED 65 YEARS,**
   S/O. VELAYUDHAN, PUTHUMANASSERY HOUSE,
   P.O.BRAHMAKULAM-680 104, THYKKAD,
   THRISSUR DISTRICT.

BY ADV. SRI.P.RAMACHANDRAN.

RESPONDENT:

NAMNED KURIES (P) LTD.,
CHITTATTUKARA, P.O.CHITTATTUKARA,
THRISSUR DISTRICT, REPRESENTED BY MANAGING DIRECTOR.

BY ADV. SRI.G.SREEKUMAR (CHELUR).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.33663/2007-G:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE E.P. NO. 659/2005 IN O.S. NO. 792/2001 ON THE FILE OF THE MUNSIFF COURT, CHAVAKKAD.

EXT.P.2: COPY OF THE COUNTER STATEMENT DTD. 10/08/2007 FILED BY THE PETITIONERS IN E.P. NO. 659/2005 IN O.S. NO. 792/2001 ON THE FILE OF THE MUNSIFF COURT, CHAVAKKAD.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No.33663 OF 2007

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Dated this the 7th day of December 2007

JUDGMENT

This writ petition is filed for a direction to the Munsiff's Court, Chavakkad to recall the arrest warrant issued against the petitioners in E.P.No.659 of 2005 in O.S.No.729 of 2001. I am informed by both sides that the decree holder moved an application under Order 21 Rule 41(2) for calling upon the defendant to furnish particulars under Form 16A of Annexure E of the C.P.C. It was not filed in time. I think a prayer was made for extension which was refused and arrest was ordered. Even in such a situation, the court is expected to be satisfied with the means of the judgment debtors to order arrest. In the absence of an opportunity of being given and a definite finding entered on evidence on the means, it may not be proper to order arrest of a person which will affect his civil liberty.

Therefore, the order under challenge is set aside and the matter is remitted back to the execution court for fresh consideration with direction to the court below to permit both sides to adduce evidence in support of their contentions and then dispose of the matter in accordance with law.

Judgment debtors shall also furnish information required under Order 21 Rule 41(2) for which some time may be given and in case of failure to comply adverse inference may be drawn.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

Cdp/-